

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
A National Broadband Plan for)	GN Docket No. 09-51
Our Future, <i>et al.</i>)	GN Docket Nos. 09-47, 09-137
)	PS Docket Nos. 06-229, 07-100, 07-114
)	WT Docket No. 06-150
)	CC Docket No. 94-102
)	WC Docket No. 05-196

COMMENTS OF ACCESS SPECTRUM, LLC – NBP PUBLIC NOTICE # 8

Access Spectrum, LLC (Access Spectrum) hereby files these comments in response to the Commission's Public Notice regarding the public safety elements of the National Broadband Plan.¹ Access Spectrum urges the Commission to take steps to promote public-private partnerships through an auction of the Upper 700 MHz D Block. If structured to provide potential bidders with sufficient incentives and certainty, these partnerships offer the best means of funding the "costs and resources necessary to satisfy public safety broadband needs for mobile wireless services."² Access Spectrum also urges the Commission to combine the D Block with the Upper 700 MHz A Block to maximize spectrum efficiencies and enhance the incentives for commercial parties to enter into public-private partnerships.

Access Spectrum is a licensee of Upper 700 MHz A Block spectrum, which is directly adjacent to the D Block. Access Spectrum has been extensively involved in the Commission's proceedings concerning the 700 MHz band. In 2006, Access Spectrum

¹ Public Notice, *Additional Comments Sought on Public Safety, Homeland Security, and Cybersecurity Elements of National Broadband Plan: NBP Public Notice # 8*, GN Docket No. 09-51, DA 09-2133, 24 FCC Rcd 12136 (rel. Sept. 28, 2009) (Public Notice).

² *Id.* at 2 (Question 1.c).

and other parties proposed modifications to the Upper 700 MHz band plan to promote greater spectrum efficiency, maximize the amount of public safety spectrum allocated for broadband use, and locate public safety broadband frequencies adjacent to commercial broadband frequencies.³ Access Spectrum's proposal was supported by the public safety community as well as a broad cross section of commercial parties, and a modified version of the proposal was adopted by the Commission.⁴ The resulting band reconfiguration "serve[s] the public interest by enabling a downward shift of the Upper 700 MHz Band public safety spectrum, which will address concerns of interference to critical public safety communications in border areas, and facilitate[s] the deployment of a nationwide broadband public safety network."⁵ In the instant comments, Access Spectrum again seeks to further the goal of enhancing public safety communications and maximizing the efficient use of valuable 700 MHz spectrum.

I. THE COMMISSION SHOULD TAKE IMMEDIATE STEPS TO PROMOTE THE DEVELOPMENT OF PUBLIC PRIVATE PARTNERSHIPS THAT WILL SERVE PUBLIC SAFETY'S BROADBAND COMMUNICATIONS NEEDS AND PUT VALUABLE SPECTRUM TO USE

For years the Commission has "sought to promote nationwide access by public safety agencies to interoperable broadband wireless services operating over a modern, IP-

³ Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Intel Corporation, and Pegasus Communications Corporation, WT Docket No. 96-86 (June 6, 2006); *see also* Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Pegasus Communications Corporation and Telcom Ventures, LLC, WT Docket No. 06-150 (Sept. 29, 2006); Comments of the Coalition for 4G in America, WT Docket No. 96-86 (May 23, 2007) (coalition consisting of Google Inc., Intel Corporation, DirecTV Group, Inc., EchoStar Satellite, LLC, Yahoo! Inc., Skype Communications S.A.R.L., and Access Spectrum, LLC).

⁴ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

⁵ *Id.* ¶ 9.

based system architecture.”⁶ No party disputes this important objective. As the Public Safety Spectrum Trust (PSST) has stated, it is “critical that the Commission include a nationwide interoperable public safety wireless broadband network in the National Broadband Plan.”⁷

The Public Notice seeks comment on a broad range of issues concerning public safety broadband needs, but no issue is more important than funding the substantial costs of meeting these needs. Indeed, the Commission has described “the limited availability of public funding” as “the most significant obstacle to constructing a public safety network.”⁸ A recent Congressional Research Service report cites estimates ranging from \$18 billion to \$40 billion to deploy a mobile broadband network to serve public safety needs.⁹ Although Congress has established grant programs to promote public safety interoperability, these programs are limited in scope and fall far short of the amount of money needed to deploy and maintain a nationwide network.¹⁰ Moreover, Congress is

⁶ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 14301, ¶ 51 (2008) (*700 MHz Third Further Notice*).

⁷ Letter from Harlin R. McEwen, Chairman, PSST, to Jennifer Manner, FCC, GN Docket No. 09-51, at 1 (Oct. 1, 2009).

⁸ *700 MHz Second Report and Order* ¶ 396.

⁹ Linda K. Moore, Congressional Research Service, “Public Safety Communications and Spectrum Issues: Policy Issues for Congress,” at 9 n.36 (Oct. 14, 2009) (“Cyren Call Communications Corporation, in *ex parte* comments filed with the FCC on June 4, 2007, set the cumulative capital expenditure for building a public-private network at \$18 billion, of which roughly a third of the cost would be for enhancements for public safety use. An estimate from Northrop-Grumman Corporation placed the cost at \$30 billion, when service applications are included. (Statement by Mark S. Adams, Chief Architect Networks and Communications, at WCA 2007, Washington, DC, June 14, 2007.) These estimates do not include the cost of radios. An estimated range of \$20 billion to \$40 billion for network infrastructure was discussed at a House of Representatives hearing held by the Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet, ‘A National, Interoperable Broadband Network for Public Safety: Recent Developments,’ September 24, 2009.”).

¹⁰ *Id.* at 12 (“The total amount of funds available in these grants programs is less than the estimated cost of a nationwide, interoperable network.”).

unlikely to appropriate the necessary level of funding in the future, particularly given the rising federal deficit and the resulting budget constraints.¹¹ The Commission correctly found last year that it should not rely on “a speculative approach that relies on government funding that may not materialize.”¹²

The Commission has consequently stated, on several occasions, that promoting public-private partnerships “remains the best option to achieve a nationwide build-out of an interoperable broadband network for public safety entities.”¹³ A public-private partnership not only can provide a mechanism for funding the costs of achieving this objective, it can do so at a significantly lower cost. As the Commission has found, “the use of a shared infrastructure for both commercial and public safety services will enable a significant cost savings in the construction of the network.”¹⁴ A public-private

¹¹ See, e.g., Jackie Calmes and Carl Hulse, *Top Democrats Are Pushing for New Strategies on Federal Deficit*, N.Y. TIMES, Nov. 1, 2009, at A26 (describing pressure on Obama Administration and Congress to tackle mounting budget deficits, citing the \$1.4 trillion deficit for fiscal year ending Sept. 30, 2009, projected deficits over the next decade that would add \$9 trillion to the national debt, and the need for legislation in late November 2009 to “raise the nation’s nearly \$12 trillion debt limit so the Treasury Department can continue borrowing to keep the government running”).

¹² 700 MHz Third Further Notice ¶ 53. See also Reply Comments of APCO, WT Docket No. 06-150, at 2-4 (July 7, 2008) (“[A]ny casual observer of Congress and the federal budget would have to acknowledge that there is little potential for [the federal government to provide the necessary funding to permit the PSST to enter into network contracts with commercial entities] anytime soon. . . . While APCO would certainly welcome such funding, the Commission cannot make policy decisions based on a ‘hope and prayer’ that Congress will act.”).

¹³ 700 MHz Third Further Notice ¶ 2. See also 700 MHz Second Report and Order ¶ 396 (“The public/private partnership approach thus provides the most practical means of speeding deployment of a nationwide, interoperable, broadband network for public safety service that is designed to meet their needs in times of crisis.”).

¹⁴ 700 MHz Third Further Notice ¶ 52.

partnership approach is also consistent with the Administration's policy of relying on public-private partnerships to help address a range of the challenges facing the nation.¹⁵

The Commission should therefore take immediate steps to promote the development of a public-private partnership model to help meet public safety communications needs. The Commission should design this new model to avoid the approach taken in Auction 73, in which the Commission unsuccessfully sought to create a public-private partnership through extensive conditions placed on an auction of the D Block. The lack of bidder interest in that auction demonstrated that overly burdensome license obligations and the lack of certainty about those obligations will deter commercial interest in a partnership. To avoid repeating this outcome, the Commission should explore a public-private partnership model that gives bidders greater certainty and that is more incentive-based. Rather than imposing "command and control" obligations, the Commission should think broadly about establishing a range of incentives – from secondary access to the public safety broadband spectrum, to automatic roaming rights across all 700 MHz blocks, to bidding credits and other incentives – that strongly encourage D Block bidders to partner with public safety. Such an incentive-based approach can successfully address public safety broadband communications needs through commercially viable public-private partnerships, without unnecessarily deterring commercial carriers that fear unknown and/or onerous obligations.

¹⁵ See, e.g., Matthew Harwood, *America's Cybersecurity Threat*, GUARDIAN UNLIMITED, June 7, 2009 ("The first key to Obama's cybersecurity strategy will be creating a public-private partnership framework, where information flows freely from the government to network operators and service providers"); Audrey Dutton, *Transportation: LaHood Suggests P3s [Public-Private Partnerships], Rules Out Gasoline Tax Hike*, THE BOND BUYER, Feb. 25, 2009 (reporting Transportation Secretary Ray LaHood's statement that "public-private partnerships should be among the options for funding transportation projects").

The Commission should move forward on this issue as soon as possible because, as it has previously made clear, providing public safety with access to wireless broadband communications “remains a critical imperative.”¹⁶ Although various public safety organizations have proposed that Congress reallocate the D Block to public safety, no bill to this effect has yet to be sponsored by a member of Congress. The Commission should not delay consideration of initiatives it can take under its current authority given the urgency of addressing public safety’s needs and the uncertainty of when, if ever, Congress would even consider reallocation legislation. Indeed, Congressman Bennie Thompson, Chair of the House Committee of Homeland Security and Congressman Henry Cuellar, Chair of the Subcommittee on Emergency Communications, Preparedness, and Response, have stated that they “will be looking to the Commission to employ creative approaches . . . to deliver the system that our nation’s first responders so desperately need,” and made clear that public-private partnerships must be part of the solution:

We are aware that there are significant cost barriers associated with implementing [a] public safety broadband network on either a regional or national basis. Therefore, we have long supported pursuit of public-private partnerships to stand up and operate a shared national network.¹⁷

The public safety community also continues to support the creation of public-private partnerships in the absence of legislation reallocating the D Block to public safety.¹⁸ In

¹⁶ 700 MHz Third Further Notice ¶ 51.

¹⁷ Comments of Hon. Bennie G. Thompson and Hon. Henry Cuellar, PS Docket No. 06-229, at 4-5 (Oct. 16, 2009).

¹⁸ See Comments of APCO, PS Docket No. 06-229, at 3-4 (Sept. 22, 2009) (“APCO also supports FCC rules that facilitate public-private partnerships to pay for and assist in the operation of a shared national network that both serves commercial customers and provides priority access for public safety users”); Letter from Harlin R. McEwen, Chairman, PSST, to Acting Chairman Copps, WT Docket No. 06-150, at 1 (June 29, 2009) (urging the Commission to “retain the

addition, a number of commercial parties have expressed interest in the creation of public-private partnerships through a D Block auction.¹⁹

The Commission should also expedite its consideration of these issues to avoid further delays in the licensing of the D Block. The D Block is highly valuable spectrum very well suited for mobile broadband services. The wireless industry has emphasized the urgent need to license additional spectrum below 3 GHz for wireless broadband, and urged the Commission to auction the D Block as soon as possible to promote these services.²⁰ Licensing the D Block quickly will help meet the nation's growing demand for wireless broadband services, stimulate economic growth, and promote competition. Delays in licensing the D Block would run contrary to these important public policy objectives and place D Block public-private partnerships at a disadvantage relative to other 700 MHz licensees. Current 700 MHz licensees, including Verizon Wireless and AT&T, are well underway in working with equipment vendors and planning their "4G"

current public-private partnership framework if Congress does not adopt" the reallocation proposal).

¹⁹ See Comments of United States Cellular Corp., GN Docket No. 09-157, at 8 (Sept. 30, 2009) (urging the Commission not to wait for legislation but to promptly issue a Further Notice of Proposed Rulemaking regarding the D Block auction and a public-private partnership business model); *700 MHz Third Further Notice* ¶ 46 & nn.79-83 (describing parties filing comments in favor of a D Block public-private partnership).

²⁰ See, e.g., Letter from Thomas J. Sugrue, T-Mobile USA, Inc., to Chairman Rick Boucher and Ranking Member Cliff Stearns, U.S. House of Representatives Subcommittee on Communications, Technology and the Internet (Sept. 23, 2009), attached to letter from Cheryl A. Tritt to Marlene H. Dortch, FCC Secretary, WT Docket No. 06-150 (Sept. 24, 2009); Presentation attached to letter from Warren G. Lavey, Counsel of United States Cellular Corporation, to Marlene H. Dortch, FCC Secretary, GN Docket No. 09-47, at 11-12 (Oct. 23, 2009); Letter from Kathleen Grillo, Verizon, to Marlene H. Dortch, Secretary, FCC, CC Docket No. 96-45, at 2 (Nov. 9, 2009) ("[T]he market for mobile broadband services is growing at a significant rate, and this growth is expected to increase exponentially in the future. As a result of this tremendous growth, the industry will need significant allocations of additional spectrum . . . in the future."); see also Comments of CTIA – The Wireless Association® – NBP Public Notice #6, GN Docket No. 09-51, at 16-27 (Oct. 23, 2009) (urging the Commission to allocate at least 800 MHz of additional spectrum for licensed commercial wireless use within the next six years to meet the growing demand for wireless broadband services).

deployments in the 700 MHz band. These carriers will be able to deploy their services well before D Block licensees if the D Block auction is delayed further, placing public-private partnerships at a commercial disadvantage. Further delays may also impede efforts to promote economies of scale in mobile equipment design and deployment for all broadband 700 MHz spectrum, not just the currently licensed spectrum, and this failure could end any hopes of viable public-private partnerships if the D Block, A Block and the public safety broadband allocation are excluded.²¹

II. COMBINING THE A AND D BLOCKS WILL ENCOURAGE PUBLIC-PRIVATE PARTNERSHIPS AND PROMOTE SPECTRUM EFFICIENCY

The delays in licensing the D Block have also impeded the full utilization of the Upper 700 MHz A Block spectrum. The Commission's decision to limit the size of the A Block to a paired 1 + 1 MHz block has effectively precluded the use of this spectrum for wireless broadband services utilizing the most common commercially-available equipment.²² Although Access Spectrum is considering options for deploying other services on the A Block, the use of this spectrum for broadband will be maximized if it is

²¹ A coalition consisting of Cellular South Licenses, Inc., Cavalier Wireless, LLC, Continuum 700, LLC, and King Street Wireless, LP ("each of which was the high bidder for and/or currently the licensee of Lower 700 MHz Band Block A spectrum"), has petitioned the Commission to initiate a rulemaking "to assure that consumers will have access to all paired 700 MHz spectrum that the Commission licenses, to act so that the entire 700 MHz band will develop in a competitive fashion, and to adopt rules that prohibit restrictive equipment arrangements that are contrary to the public interest." Petition for Rulemaking Regarding the Need for 700 MHz Mobile Equipment to be Capable of Operating on All Paired Commercial 700 MHz Frequency Blocks, RM-____, at 1 (Sept. 29, 2009). Access Spectrum supports this petition and urges the Commission to initiate the requested rulemaking as soon as possible.

²² In 2006, Access Spectrum and other parties proposed to increase the size of the 1 MHz Upper 700 MHz A Block by 500 kHz paired to make the A Block suitable for broadband services. Comments of Access Spectrum, *et al.*, WT Docket No. 96-86, at 13-15 (June 6, 2006). Access Spectrum explained that next-generation technologies typically require a minimum of 1.25 MHz of contiguous spectrum to provide broadband service and warned the Commission that a 1 MHz paired A Block would not accommodate 1.25 MHz broadband channels. The Commission, however, rejected this proposal. *700 MHz Second Report and Order* ¶ 137.

used in conjunction with one of the adjacent broadband blocks, including the D Block. Pursuing this option, however, has been impeded by the uncertainty regarding when and how the D Block will be licensed.

Access Spectrum consequently urges the Commission to move forward with licensing the D Block not only for the reasons described in Section I above, but also to provide greater certainty for A Block licensees. The Commission should also combine the A and D Blocks into a single 6 + 6 MHz block, with existing A Block licensees being compensated for their spectrum rights either through the grant of transferable bidding credits or a two-sided auction conducted at the same time as the D Block auction.

Combining the A and the D Blocks would create a number of significant public interest benefits. First, it will attract greater interest in the public-private partnership by increasing the amount of spectrum the winning bidder would receive, thus enhancing the Commission's leverage in structuring a partnership to promote public safety broadband. Second, it will create a 6 + 6 MHz block, or, if combined with the public safety broadband spectrum as part of a partnership, an 11 + 11 MHz block, which will harmonize the A, D, and public safety broadband blocks with other 700 MHz spectrum blocks (namely, the Upper 700 MHz C Block and the Lower 700 MHz A, B, and C Blocks). This harmonization will promote efficiencies and economies of scale in the channelization and deployment of equipment on this spectrum. Third, the combined block would allow for a better use of scarce spectrum resources by allowing the smaller A Block to be used in conjunction with a larger spectrum block, and also reduce the transactions costs of combining the two blocks.

Given these benefits, combining the A and D Blocks should be an element of the Commission's Broadband Plan and should also be part of the framework for auctioning the D Block to promote public-private partnerships. This step will promote public safety communications and more efficient use of highly valuable spectrum.

III. CONCLUSION

The Public Notice raises important questions concerning the challenges of meeting the communications needs of the nation's first responders. As explained in these comments, the development of incentive-based public-private partnerships and the combination of the A and D Blocks can play an important role in overcoming these challenges. Access Spectrum urges the Commission to consider these steps as it moves forward with its broadband plan for public safety.

Respectfully submitted,

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